

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**GARY MACNEILAGE and  
VALERIE MACNEILAGE,**

**Plaintiffs,**

**RISK MANAGEMENT DIVISION OF  
THE STATE OF NEW MEXICO,**

**Plaintiff in Intervention,**

**v.**

**No. CIV. 07-841 RHS/WDS**

**AVILL YOUNG, et al.,**

**Defendants.**

**ORDER DEFERRING RULING ON DEFENDANT CYFD'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT TO DISMISS COUNT VI**

**THIS MATTER** comes before the Court in consideration of Defendant Children Youth & Families Department's [{"CYFD's"}] Motion and Memorandum for Partial Summary Judgment to Dismiss Count VI of Plaintiffs' First Amended Complaint ("Motion"), filed June 27, 2009 [**Doc. No. 224**]. In their response, Plaintiffs request an opportunity for additional discovery. Plaintiffs' attorney avers that Ms. Maryellen Bearzi has not been deposed and "Plaintiffs are unable to challenge the factual information supplied by Ms. Bearzi, as they cannot discover its underlying basis . . . ." <sup>1</sup> (Rule 56 (f) Affidavit ("Affidavit") ¶¶ 5, 6, Ex. H, attached to Plaintiffs' Response to Motion ("Response"), filed Jul. 21, 2009 [**Doc. No. 227**]). Plaintiffs' attorney further avers that "Plaintiffs have had no meaningful opportunity to depose witnesses from CYFD which have relevant information related to the contractual relationship between

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<sup>1</sup>Defendant cites to Ms. Bearzi's affidavit as supporting evidence for six of its twelve statements of undisputed material facts. (See Motion at 3-5).

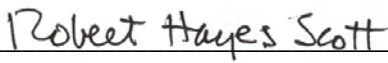
CYFD and PCR . . . and the supervision of the Young household.” (Affidavit ¶ 7, Ex. H, attached to Response). Having considered the parties’ briefing, the relevant authorities and being otherwise advised in the premises, the Court will grant Plaintiffs’ request for further discovery. Accordingly, the Court will defer ruling on Defendant’s Motion so that Plaintiffs may engage in further discovery, to include the taking of Ms. Bearzi’s deposition. After the parties have engaged in additional discovery, Plaintiffs will be permitted to file an amended response<sup>2</sup> to Defendant’s Motion and Defendant will be permitted to file an amended reply.

**WHEREFORE,**

**IT IS ORDERED** that the Court’s ruling on Defendant CYFD’s Motion and Memorandum for Partial Summary Judgment to Dismiss Count VI of Plaintiffs’ First Amended Complaint [**Doc. No. 224**] is **deferred**.

**IT IS FURTHER ORDERED** that Plaintiffs shall have an opportunity to engage in discovery relevant to the issues raised in Defendant CYFD’s Motion [**Doc. No. 224**].

**IT IS FURTHER ORDERED** that Plaintiffs may serve and file an amended response to Defendant CYFD’s Motion on or before **Monday, November 16, 2009**, and Defendant CYFD may serve and file an amended reply within **fifteen (15) calendar days** after service of Plaintiffs’ amended response.

  
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ROBERT HAYES SCOTT  
UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup>Plaintiffs are cautioned that their response must comport with the requirements set forth in local civil rule 56.1(b). (D.N.M.LR-Civ. 56.1(b) (“Each fact in dispute *must be numbered*, must refer *with particularity* to those portions of the record upon which the opposing party relies, and *must state the number of the movant’s fact that is disputed*. All material facts set forth in the statement of the movant will be deemed admitted unless *specifically* controverted.” (emphasis added)).